

MOBILEMEDIA COMMUNICATIONS, INC.

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(703) 312-5152

July 30, 1996

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JUL 30 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C.

DOCKET FILE COPY ORIGINAL

Re: WT Docket No. 96-18 and PP Docket No. 93-253

Dear Mr. Caton:

Enclosed is a revised version of the MobileMedia Comments and Opposition to Petition for Reconsideration that was filed with the Commission on July 15, 1996.

If you have any questions, please do not hesitate to call me at (703) 312-5152.

Sincerely,

*Gene P. Belardi/msw*  
Gene Belardi

Enclosure

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Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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JUL 30 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Revision of Part 22 and Part 90 of the  
Commission's Rules to Facilitate Future  
Development of Paging Systems

Implementation of Section 309(j)  
of the Communications Act --  
Competitive Bidding

WT Docket No. 96-18

PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

**COMMENTS AND OPPOSITION TO PETITIONS FOR RECONSIDERATION  
OF MOBILEMEDIA COMMUNICATIONS, INC.**

MobileMedia Communications, Inc. ("*MobileMedia*"), the parent company of MobileMedia Paging, Inc. and Mobile Communications Corporation of America ("*MobileComm*"),<sup>1/</sup> hereby submits Comments and Opposition to Petitions for Reconsideration regarding the Commission's First Report and Order (the "*First Report and Order*")<sup>2/</sup> in the above-captioned docket. First, MobileMedia opposes the suggestion that the Commission grant nationwide exclusivity to applicants who had not yet completed construction of their nationwide networks as of the date on which the Commission adopted its Notice of Proposed Rule Making in the above-captioned docket. Second, MobileMedia supports several parties who favor curtailing the ability of numerous third parties to file mutually-exclusive applications to applications for expansion. Finally, MobileMedia believes

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<sup>1/</sup> MobileMedia, MobileComm and their subsidiaries comprise the second-largest paging company in the United States, with more than four million units in service. The companies provide service in all 50 states, offering subscribers local, regional and nationwide paging and other wireless messaging services.

<sup>2/</sup> FCC 96-183 (released April 23, 1996).

that the Commission should restrict its exception for processing 929 MHz applications filed prior to February 8, 1996 to those filed by true incumbents.

**I. NATIONWIDE EXCLUSIVITY SHOULD NOT BE GRANTED TO APPLICANTS THAT HAVE NOT SUBSTANTIALLY COMPLETED CONSTRUCTION OF THEIR INITIAL NETWORKS**

The Personal Communications Industry Association ("PCIA") has urged the Commission to grant nationwide exclusivity to licensees who had not yet completed construction of the requisite number of facilities for nationwide exclusivity as of the February 8, 1996 adoption date of the Commission's Notice of Proposed Rule Making in this proceeding.<sup>3/</sup> It would be bad public policy to allow applicants who have, in some cases, done nothing but file applications and, in any event, have failed to substantially complete construction requirements for a nationwide license to have their frequencies treated as nationwide exclusive frequencies that are exempt from the modified freeze provisions adopted in the First Report and Order and that will be excluded from geographic licensing. Such applicants were never guaranteed any special status; they were simply given the opportunity to build out their networks to meet requirements for nationwide exclusivity. Unlike others who undertook prompt construction of nationwide networks, these firms elected not to do so. For example, one licensee who was coordinated for nationwide exclusivity in 1994 has yet to build a single base station even though its grant has expiration dates beyond February 8, 1996. It clearly should not be eligible for nationwide exclusivity. These applicants have had ample opportunity to construct; having failed to build out their networks to achieve

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<sup>3/</sup> See PCIA Petition for Partial Reconsideration, filed June 10, 1996, at 3.

nationwide licenses, they should now compete for licenses in whatever licensing scheme the Commission may adopt in this proceeding. At a minimum, the Commission should analyze each prospective licensee's progress in building out networks and grant exclusivity only to those applicants that have made substantial progress in the construction of nationwide networks.

## II. ONLY BONA FIDE COMPETING APPLICANTS SHOULD BE ELIGIBLE TO FILE COMPETING EXPANSION APPLICATIONS

MobileMedia supports the numerous parties who seek to curtail the abilities of third parties to file competing applications against *bona fide* expansion applications.<sup>4/</sup> The ability of incumbent licensees actually to expand their systems is limited by the abilities of numerous other parties to file mutually-exclusive applications against the initial expansion application and thus effectively block the *bona fide* applicant from expanding its system. Under the Commission's proposed rules, any other party, no matter how *bona fide* its interest in developing a paging system, can file a competing application.<sup>5/</sup> As numerous other parties have argued, "[b]y imposing absolutely no limits on "[mutually-exclusive]" filings, the [First Report and Order] encourages speculative and extortionate filings while

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<sup>4/</sup> The Commission's recently-introduced change in the cut-off date for eligibility of applicants seeking expansion of their paging systems is the most reasonable solution to resolving which applicants should be able to expand their systems. The amended cut-off to applications on file as of September 30, 1995 is reasonable; applicants who submitted applications after such date could not reasonably have expected grants prior to February 8, 1996 (the previously-selected cut-off based on the actual application grants).

<sup>5/</sup> Order on Reconsideration of First Report and Order, WT Docket 96-18, PP Docket No. 93-253 (released June 11, 1996).

offering no rationale as to why these filings are necessary."<sup>6/</sup> The Commission simply states that it seeks, "to prevent any possible prejudice to parties with a potential interest in the channel."<sup>7/</sup> However, such proposal takes away the very thing which the Commission sought to allow, the ability of incumbent licensees to expand their systems during the freeze, for the Commission will hold all mutually-exclusive applications, including of course the initial expansion application, in abeyance until the conclusion of this proceeding. While the purpose of the expansion filing rights is to allow existing licensees to meet customer needs, the granting to any party the ability to file against such application appears to have no justification. The Commission has the authority to set licensee eligibility standards and has indeed used such authority to limit the class of potential initial applicants for expansion.<sup>8/</sup> The Commission should likewise restrict the class of potential competing filers to incumbent co-channel licensees.

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<sup>6/</sup> Petition for Partial Reconsideration of ProNet, Inc., filed June 10, 1996, at 5; *see also* Petition for Clarification and/or Partial Reconsideration of Interim Licensing Rules, filed June 6, 1996, at 3-5; Petition for Partial Reconsideration of Blooston, Mordkofsky, Jackson & Dickens, filed June 6, 1996, at 5; Petition for Reconsideration of Paging Network, Inc., filed June 10, 1996, at 3.

<sup>7/</sup> *See* First Report and Order, ¶ 26.

<sup>8/</sup> *See* Petition for Clarification And/or Partial Reconsideration of Interim Licensing Rules of Ameritech, filed June 6, 1996 (citing *U.S. v. Storer Broadcasting*, 351 U.S. 192 (1956)).

### III. THE COMMISSION'S PROCESSING OF 929 MHZ APPLICATIONS SHOULD APPLY ONLY TO BUILT-OUT INCUMBENTS

The Commission states that only 929 MHz PCP exclusive applications filed by incumbents on or before February 8, 1996 and which are not mutually exclusive, will be processed.<sup>9/</sup> Diamond Page argues that the Commission should include applicants like themselves, who have never built out their systems and indeed do not currently operate any PCP systems, within the definition of "incumbent."<sup>10/</sup> This is merely an attempt to gain an unjustified exemption from whatever licensing and auction scheme the Commission adopts for the paging industry. The Commission's interim licensing policy is intended to allow incumbent operators to add service to meet customer requirements. Obviously, parties such as Diamond Page, which have no PCP operations or customers, are beyond the scope of that policy. At bottom, Diamond Page and others similarly situated are not incumbents and there is no policy reason to treat them as such.

### IV. CONCLUSION

For the foregoing reasons, the Commission should further modify its partial freeze by curtailing the ability of third parties to file competing applications against *bona fide*

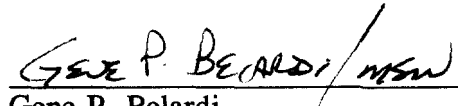
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<sup>9/</sup> See First Report and Order, ¶ 42.

<sup>10/</sup> See Petition for Clarification or Reconsideration of Diamond Page Partnership, AmericaOne Partnership, and affiliated entities (collectively, "Diamond Page"), filed June 10, 1996, at 3.

expansion applications and by clarifying its definition of "incumbent" for purposes of defining which 929 MHz PCP applications should be processed during the pendency of the freeze.

Respectfully submitted,

Handwritten signature of Gene P. Belardi in black ink, with the letters "msw" written at the end of the signature.

Gene P. Belardi  
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MobileMedia Communications, Inc.  
2101 Wilson Boulevard, Suite 935  
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Dated: July 15, 1996

**CERTIFICATE OF SERVICE**

I, Andrea Rainey, hereby certify that on this 30th day of July, 1996, copies of  
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